

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**CAMPAIGN FOR ACCOUNTABILITY,**  
611 Pennsylvania Avenue SE, #337  
Washington, DC 20003,

Plaintiff,

v.

**U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES,**  
200 Independence Avenue SW  
Washington, DC 20201

and

**U.S. DEPARTMENT OF STATE,**  
Office of Information Programs and Services,  
A/GIS/IPS/RL, SA-2, Suite 8100  
Washington, DC 20522

and

**U.S. AGENCY FOR INTERNATIONAL  
DEVELOPMENT,**  
Office of Management Services,  
Room 2.07-C - RRB  
Washington, DC 20523,

Defendants.

Civil Case No. 18-cv-464

**COMPLAINT**

1. Plaintiff Campaign for Accountability brings this action against the U.S. Department of Health and Human Services, the U.S. Department of State, and the U.S. Agency for International Development under the Freedom of Information Act, 5 U.S.C. § 522 (“FOIA”),

and the Declaratory Judgement Act, 28 U.S.C. § § 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331, 2201 and 2202.

3. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendants failed to comply with the applicable time-limit provisions of FOIA, Campaign for Accountability is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining Defendants from continuing to withhold records and ordering the production of records improperly held.

### **PARTIES**

5. Plaintiff Campaign for Accountability (“CfA”) is a non-partisan organization primarily engaged in disseminating information to the public. CfA uses research, litigation, and communications to expose misconduct and malfeasance in public life. Through research and FOIA requests, CfA uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government, local and state governments, and other public actors through reports, press releases, and other media.

6. Defendant the U.S. Department of Health and Human Services (“HHS”) is a department of the executive branch of the U.S. government, headquartered in Washington, D.C.,

and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). HHS has possession, custody, and control of the records CfA seeks.

7. Defendant the U.S. Department of State (“State”) is a department of the executive branch of the U.S. government headquartered in Washington, D.C., and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). State has possession, custody, and control of the records CfA seeks.

8. Defendant the U.S. Agency for International Development (“USAID”) is an independent agency of the U.S. government headquartered in Washington D.C. USAID was created by mandate of the Foreign Assistance Act, 22 U.S.C. § 2151 and established by executive order on September 4, 1961. USAID has possession, custody, and control of the records CfA seeks.

### **STATEMENT OF FACTS**

9. The Mexico City Policy, first announced by the Reagan administration and rescinded and reinstated by subsequent administrations, is a United States government policy that blocks U.S. federal funding for foreign non-governmental organizations that provide abortion counselling or referrals. On January 23, 2017, President Donald Trump reinstated and expanded the Mexico City Policy via presidential memorandum. Subsequently, on May 15, 2017, State issued guidance implementing the policy, “Protecting Life in Global Health Assistance.”

10. United Nations Population Fund (“UNFPA”) is an agency within the United Nations that focuses on reproductive health and rights. According to its website, UNFPA’s

mission is to “deliver a world where every pregnancy is wanted, every childbirth is safe and every young person’s potential is fulfilled.” On April 3, 2017, in a letter to U.S. Senate Foreign Relations Committee Chairman Bob Corker, State declared it was withdrawing U.S. funding for the UNFPA.

11. On September 27, 2017, CfA submitted FOIA requests to HHS, State, and USAID, seeking documents and records related to Defendants’ communications with specific non-profit organizations promoting conservative values on reproductive rights, and/or White House officials regarding the Trump administration’s reinstatement and implementation of the Mexico City Policy.

12. CfA also requested documents and records of communications between State and those same non-profit organizations and/or White House officials regarding the Trump administration’s decision to end funding for the United Nations Population Fund (“UNFPA”).

13. The public deserves the opportunity to determine whether and to what extent these organizations influenced HHS, State, and USAID as they counsel the Trump administration’s reinstatement of the Mexico City Policy and decision to stop funding the UNFPA. These matters are of paramount public concern.

14. The specifics of each request are set out in detail below.

*The Department of Health and Human Services FOIA Request*

15. On September 27, 2017, CfA submitted a FOIA request to HHS (“HHS FOIA Request”) seeking:

- a. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of HHS from, sent by representatives of HHS to, or exchanged between representatives of HHS and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or the Center for Family and Human Rights (“C-Fam”) regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
- b. All calendar entries reflecting meetings between representatives of HHS and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
- c. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of HHS from, sent by representatives of HHS to, or exchanged between representatives of HHS and representatives of the Department of State, the U.S. Agency for International Development, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
- d. All calendar entries reflecting meetings between representatives of HHS and representatives of the Department of State, the U.S. Agency for International Development, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.

16. The request sought all responsive records from January 20, 2017, to the date of the search. A copy of the HHS FOIA Request is attached hereto as Exhibit A and incorporated herein.

17. On October 10, 2017, CfA received a letter from Michael S. Marquis, Director of FOI/Privacy Acts Division of HHS stating that HHS initiated a search for the documents. Mr. Marquis further stated that CfA’s request was “voluminous” and required “extensive search and

examination,” and that HHS planned to contact CfA “shortly” to discuss modifying the request. CfA’s HHS FOIA Request was assigned tracking number **2017-01242-FOIA-OSB**. A copy of the letter is attached hereto as Exhibit B and incorporated herein.

18. As of February 21, 2018, the status of the HHS FOIA Request is listed as “In Process.” CfA has not received any further communication from HHS regarding this request.

*The U.S. Department of State FOIA Request*

19. On September 27, 2017, CfA submitted a FOIA request to State (“State FOIA Request”) seeking:

- a. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of State from, sent by representatives of State to, or exchanged between representatives of State and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or the Center for Family and Human Rights (“C-Fam”) regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
- b. All calendar entries reflecting meetings between representatives of State and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
- c. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of State from, sent by representatives of State to, or exchanged between representatives of State and representatives of the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.

- d. All calendar entries reflecting meetings between representatives of State and representatives of the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global Health Assistance" plan implementing the policy.
- e. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of State and Heritage Foundation, and/or C-Fam regarding State's decision, announced in an April 3 letter to Senator Bob Corker, to end its funding for the United Nations Population Fund ("UNFPA").
- f. All calendar entries reflecting meetings between representatives of State and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding State's decision to end its funding for UNFPA.
- g. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of State and representatives of the Trump White House regarding State's decision to end its funding for the UNFPA.
- h. All calendar entries reflecting meetings between representatives of State and representatives of the Trump White House regarding State's decision to end its funding for UNFPA.

20. The request sought all responsive records from January 20, 2017, to the date of the search. A copy of the State FOIA Request is attached hereto as Exhibit C and incorporated herein.

21. On October 12, 2017, CfA received a letter from State's Requester Communications Branch, Office of Information Programs & Services deferring CfA's request for a fee waiver until State is "able to determine whether the disclosure of any records responsive to your request is in the public interest consistent with 22 C.F.R. § 171.16," and assigning the request tracking number **F-2017-15758**. A copy of the letter is attached hereto as Exhibit D and incorporated herein.

22. CfA has not received any further communication from State regarding this request.

*U.S. Agency on International Development FOIA Request*

23. On September 27, 2017, CfA submitted a FOIA request to USAID (“USAID FOIA Request”) seeking:

- a. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of USAID from, sent by representatives of USAID to, or exchanged between representatives of USAID and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or the Center for Family and Human Rights (“C-Fam”) regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
- b. All calendar entries reflecting meetings between representatives of USAID and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
- c. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of USAID from, sent by representatives of USAID to, or exchanged between representatives of USAID and representatives of the Department of State, the Department of Health and Human Services, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
- d. All calendar entries reflecting meetings between representatives of HHS and representatives of the Department of State, the Department of Health and Human Services, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.



24. The request sought all responsive records from January 20, 2017 to the date of the search. A copy of the USAID FOIA Request is attached hereto as Exhibit E and incorporated herein.

25. On September 28, 2017, CfA received an email from Qianna Norman, ADR/FOIA Specialist at USAID, stating that CfA's fee waiver request was moot as CfA is a member of the media and assigning CfA's request tracking number **F-00300-17**. A copy of the email is attached hereto as Exhibit F and incorporated herein.

26. CfA has not received any further communication from USAID regarding this request.

*Exhaustion of Administrative Remedies*

27. Through HHS, State, and USAID's failure to produce the requested documents or otherwise respond within twenty business days, CfA has exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C)(i) and seeks immediate judicial review.

28. As of the date of this complaint, Defendants have failed to (a) notify CfA of any determination regarding the requests, including the scope of any responsive records Defendants intend to produce or withhold and the reasons for any withholdings or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Failure to Conduct Adequate Search for Responsive Records**

29. CfA repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth therein.

30. CfA properly requested records within the possession, custody and control of the Defendants.

31. Defendants are agencies subject to FOIA and must, therefore, make reasonable efforts to search for the requested records.

32. Defendants have failed to promptly review agency records for the purpose of locating those records which are responsive to CfA's FOIA requests.

33. Defendants' failure to conduct adequate searches for responsive records violates FOIA.

34. Plaintiff CfA, therefore, is entitled to injunctive and declaratory relief requiring Defendants to promptly make reasonable efforts to search for records responsive to CfA's FOIA requests.

**COUNT II**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Wrongful Withholding of Non-Exempt Responsive Records**

35. CfA repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

36. CfA properly requested records within the possession, custody and control of Defendants.

37. Defendants are agencies subject to FOIA and, therefore, must release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

38. Defendants are wrongfully withholding non-exempt agency records requested by CfA by failing to produce non-exempt records responsive to its FOIA requests.

39. Defendants are wrongfully withholding non-exempt agency records requested by CfA by failing to segregate exempt information in otherwise non-exempt records responsive to CfA's FOIA requests.

40. Defendants' failure to provide all non-exempt responsive records violates FOIA.

41. Plaintiff CfA is, therefore, entitled to declaratory and injunctive relief requiring Defendants to promptly produce all non-exempt records responsive to its FOIA requests and provide indices justifying the withholding of any responsive records withheld under claim of exemption.

### **REQUESTED RELIEF**

42. WHEREFORE, CfA respectfully requests the Court to:

- a. Order Defendants to conduct searches reasonably calculated to uncover all records responsive to CfA's FOIA requests;
- b. Order Defendants to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to CfA's FOIA requests and indices justifying the withholding of any responsive records withheld under claim of exemption;
- c. Enjoin Defendants from continuing to withhold any and all non-exempt records responsive to CfA's FOIA requests;

- d. Award CfA the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e. Grant CfA such other relief as the Court deems just and proper.

Dated: February 27, 2018

Respectfully submitted,

BAKER & HOSTETLER LLP

By: s/ Carey S. Busen  
Carey S. Busen (DC Bar: 982217)  
[cbusen@bakerlaw.com](mailto:cbusen@bakerlaw.com)

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Washington, D.C. 20036-5403

Attorneys for Plaintiff  
CAMPAIGN FOR ACCOUNTABILITY,  
611 Pennsylvania Avenue SE, #337  
Washington, DC 20003

# EXHIBIT A

## Freedom of Information Request

KO ✓

Katie O'Connor

Wed 9/27/2017, 1:13 PM

FOIARequest@hhs.gov ✕



Reply all | ✓

FOIA

You forwarded this message on 2/12/2018 11:46 AM

CfA FOIA-HHS-MCP-... ✓

269 KB

✓ Show all 1 attachments (269 KB) Download Save to OneDrive - Campaign for Accountability

To whom it may concern:

Attached, please find a Freedom of Information Act Request. Please do not hesitate to contact me with any questions or concerns regarding this request.

Sincerely,  
Katie O'Connor

Katie O'Connor  
Legal Counsel\*  
Campaign for Accountability  
[www.campaignforaccountability.org](http://www.campaignforaccountability.org)  
[@Accountable\\_Org](https://twitter.com/Accountable_Org)

\*licensed to practice in Massachusetts and Georgia

C A M P A I G N F O R

ACCOUNTABILITY

September 27, 2017

By email: [FOIARequest@hhs.gov](mailto:FOIARequest@hhs.gov)

Michael Marquis  
Freedom of Information Officer  
Department of Health and Human Services  
Hubert H. Humphrey Building, Room 729H  
200 Independence Avenue, SW  
Washington, DC 20201

**Re: Freedom of Information Request**

Dear Mr. Marquis:

Campaign for Accountability (“CfA”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, et seq., and Department of Health and Human Services (“HHS”) implementing regulations, 45 C.F.R. Part 5.

Specifically, CfA requests that HHS produce the following within 20 business days:

1. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of HHS from, sent by representatives of HHS to, or exchanged between representatives of HHS and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or the Center for Family and Human Rights (“C-Fam”) regarding the January 23 presidential memorandum reinstating the Mexico City Policy,<sup>1</sup> or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.<sup>2</sup>
2. All calendar entries reflecting meetings between representatives of HHS and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
3. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of HHS from, sent by representatives of HHS to, or exchanged between representatives of HHS and representatives of the Department of State, the U.S. Agency for International

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<sup>1</sup> Presidential Memorandum Regarding the Mexico City Policy, Jan. 23, 2017, *available at* <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-mexico-city-policy>.

<sup>2</sup> Protecting Life in Global Health Assistance Fact Sheet, Department of State, May 15, 2017, *available at* <https://www.state.gov/r/pa/prs/ps/2017/05/270866.htm>.

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Development, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global Health Assistance" plan implementing the policy.

4. All calendar entries reflecting meetings between representatives of HHS and representatives of the Department of State, the U.S. Agency for International Development, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global Health Assistance" plan implementing the policy.

Please provide all responsive records from January 20, 2017, to the date the search is conducted.

By way of background, on January 23, 2017, President Trump signed the "Presidential Memorandum Regarding the Mexico City Policy," reinstating and expanding a policy that withholds U.S. funding from international non-governmental organizations that counsel or refer for abortions, or advocate to decriminalize and expand access to abortion.<sup>3</sup> On May 15, 2017, the Department of State announced its "Protecting Life in Global Health Assistance" plan implementing the policy.<sup>4</sup> In its past iterations, which applied only to family planning funds, the Mexico City Policy has had devastating consequences, leading to "the closing of some of the developing world's most effective family planning programs."<sup>5</sup> In its most recent form, which applies to all global health funds, the policy stands to do much more significant damage. It now applies not only to family planning and reproductive health, but also to maternal and child health, HIV/AIDS, prevention and treatment of malaria, infectious diseases, and even to water, sanitation, and hygiene programs.<sup>6</sup>

The Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and C-Fam have worked in close coordination with members of Congress and with this administration on issues of reproductive rights and international women's rights. Last fall, for instance, the Susan B. Anthony List, Concerned Women for America, and C-Fam joined the "Pro-Life Coalition" in support of the Trump-Pence ticket.<sup>7</sup> Representatives of Concerned Women for America have met at least once with Vice President Pence<sup>8</sup> and representatives of the Susan B. Anthony List have met with both the Vice President and Speaker of the House Paul Ryan.<sup>9</sup>

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<sup>3</sup> Jessie Hellman, *Trump reinstates ban on US funding for abortion overseas*, *The Hill*, Jan. 23, 2017, available at <http://thehill.com/policy/healthcare/abortion/315652-trump-signs-executive-order-reinstating-global-gag-rule-on>.

<sup>4</sup> Protecting Life in Global Health Assistance Fact Sheet, Department of State, May 15, 2017.

<sup>5</sup> Sneha Barot and Susan A. Cohen, Guttmacher Institute, *The Global Gag Rule and Fights over Funding UNFPA: The Issues That Won't Go Away* at 29, Spring 2015, available at [https://www.guttmacher.org/sites/default/files/article\\_files/gpr1802715.pdf](https://www.guttmacher.org/sites/default/files/article_files/gpr1802715.pdf).

<sup>6</sup> Human Rights Watch, *Trump's 'Mexico City Policy' or 'Global Gag Rule'*, June 22, 2017, available at <https://www.hrw.org/news/2017/06/22/trumps-mexico-city-policy-or-global-gag-rule>.

<sup>7</sup> Press Release, The Susan B. Anthony List, *Trump Campaign Announces National Co-Chairs of Pro-Life Coalition*, Sept. 27, 2016, available at <https://www.sba-list.org/newsroom/press-releases/trump-campaign-announces-national-co-chairs-pro-life-coalition>.

<sup>8</sup> Christine Grimaldi, *Mike Pence Had a Meeting With Anti-Choice Activists He Doesn't Want You to Know About*, *Rewire*, July 11, 2017, available at <https://rewire.news/article/2017/07/11/mike-pence-meeting-anti-choice-activists-doesnt-want-know/>.

<sup>9</sup> Elizabeth Dias, *Inside Mike Pence's Private Meeting with March for Life Leaders*, *Time*, Jan. 27, 2017, available at <http://time.com/4651781/mike-pence-march-life-meeting-abortion/>; Mike DeBonis and John Wagner,



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Representatives of both organizations have met with President Trump at least once since the inauguration.<sup>10</sup> In March of this year, representatives of C-Fam and the Heritage Foundation attended the U.N. Commission on the Status of Women meeting as members of the official U.S. delegation.<sup>11</sup> The public deserves the opportunity to determine whether and to what extent these organizations have attempted to influence HHS as it counsels the administration and Congress on the expanded Mexico City Policy, a matter of paramount public concern. The requested records would give the public that opportunity.

In addition to the records requested above, please provide records reflecting the processing of this request, including any tracking sheets; records sufficient to identify search terms used, and locations and custodians searched. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

CfA seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

Please search all records regarding agency business. Please do not exclude searches of files or emails in the personal custody of agency officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>12</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; CfA has a right to access those files even if they have not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>13</sup>

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Republicans try to revive health-care effort as leaders seek to temper expectations, *Washington Post*, Apr. 4, 2017, available at [https://www.washingtonpost.com/powerpost/with-help-from-pence-house-republicans-suddenly-rekindle-health-care-talks/2017/04/04/91cf1c74-192f-11e7-855e-4824bbb5d748\\_story.html?utm\\_term=.65f99b29d43e](https://www.washingtonpost.com/powerpost/with-help-from-pence-house-republicans-suddenly-rekindle-health-care-talks/2017/04/04/91cf1c74-192f-11e7-855e-4824bbb5d748_story.html?utm_term=.65f99b29d43e); Christine Grimaldi, *Rewire*, July 11, 2017; Press Release, Office of the Speaker of the House Paul Ryan, 115<sup>th</sup> Congress, Speaker Ryan Meets with Conservative Leaders, March 30, 2017, available at <http://www.speaker.gov/press-release/speaker-ryan-meets-conservative-leaders>.

<sup>10</sup> Wolf (CNN television broadcast Feb. 1, 2017), transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/1702/01/wolf.02.html>; Rebecca Ballhaus, *Trump Again Criticizes Jeff Sessions Over Russia Probe*, *Wall Street Journal*, Sept. 26, 2017, available at <https://www.wsj.com/articles/trump-again-criticizes-jeff-sessions-over-russia-probe-1506434848>.

<sup>11</sup> Kathryn Joyce, *The New War on Birth Control*, *Pacific Standard*, Aug. 17, 2017, available at <https://psmag.com/magazine/new-war-on-birth-control>.

<sup>12</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, 827 F.3d 145, 149—150 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955—956 (D.C. Cir. 2016).

<sup>13</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, \_\_\_, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails

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In addition, please note that in conducting a “reasonable search” as required by law, HHS must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered HHS’s prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>14</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but HHS’s archiving tools would capture that email under Capstone. Accordingly, CfA insists that HHS use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. CfA is available to work with HHS to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>15</sup> If it is your position that any portion of the requested records is exempt from disclosure, CfA requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>16</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>17</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>18</sup>

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from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>14</sup> Presidential Memorandum – Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), *available at* <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), *available at* <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>15</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

<sup>16</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>17</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>18</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

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In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>19</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, CfA welcomes an opportunity to discuss its request with HHS before you undertake your search or incur search or duplication costs. By working together at the outset, CfA and HHS can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format via email at [koconnor@campaignforaccountability.org](mailto:koconnor@campaignforaccountability.org). Alternatively, our mailing address is Campaign for Accountability, 611 Pennsylvania Avenue SE, #337, Washington DC 20003. If it will accelerate the release, please also provide responsive material on rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 45 C.F.R. § 5.54, CfA requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute significantly to a better understanding of relevant government procedures by the general public. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).<sup>20</sup>

CfA requests a waiver of fees because disclosure of the requested information is in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>21</sup> The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public’s business.

Studies show that the Mexico City Policy does real harm to the global reproductive health infrastructure.<sup>22</sup> Nevertheless, this administration has reinstated and expanded the policy. As demonstrated above, the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and C-Fam have worked closely with this administration and Congress on reproductive rights and women’s rights issues. The records CfA seeks will help the public

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<sup>19</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>20</sup> See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

<sup>21</sup> 45 C.F.R. § 5.54(a).

<sup>22</sup> The Global Gag Rule and Fights over Funding UNFPA: The Issues That Won’t Go Away at 29, Spring 2015.

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understand whose interests are being considered as the administration makes decisions that have such a profound impact on people's lives.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) organization, CfA does not have a commercial purpose and the release of the information requested is not in CfA's financial interest. CfA is committed to protecting the public's right to be aware of the activities of government officials and to ensuring the integrity of those officials. CfA uses a combination of research, litigation, and advocacy to advance its mission. CfA will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CfA will disseminate any documents it acquires from this request to the public through its website, [www.campaignforaccountability.org](http://www.campaignforaccountability.org).

Accordingly, CfA qualifies for a fee waiver.

### **News Media Fee Waiver Request**

CfA also asks that it not be charged search or review fees for this request because CfA qualifies as a "representative of the news media" pursuant to the FOIA and HHS regulation 45 C.F.R. § 5.53. In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the District of Columbia Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly; "[i]t is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.* CfA meets this test.

CfA routinely and systematically "gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience."<sup>23</sup> It does so by regularly posting documents it receives through open records laws, including the FOIA, to its website,<sup>24</sup> analyzing those documents, and publishing reports, letters, and further requests based those documents.<sup>25</sup> Based on its publication activities, CfA qualifies as a "representative of the news media" under the FOIA and agency regulations.

<sup>23</sup> 45 C.F.R. § 5.3; 5 U.S.C. § 552(a)(4)(A)(ii)(III).

<sup>24</sup> Letter from Daniel Stevens, Executive Director, Campaign for Accountability, to Thomas B. Pahl, Acting Director, Bureau of Consumer Protection, Federal Trade Commission (July 19, 2017), *available at* <https://campaignforaccountability.org/work/ftc-solar-complaint/>; Letter from Katie O'Connor, Legal Counsel, Campaign for Accountability, to Margaret Moore, Travis County District Attorney (Sept. 26, 2017), *available at* <https://www.documentcloud.org/public/search/projectid:35338-CfA-Letter-to-Travis-County-DA-9-26-17>.

<sup>25</sup> Campaign for Accountability, *Utah Commission for the Stewardship of Public Lands*, Sept. 7, 2017, *available at* <https://campaignforaccountability.org/work/utah-commission-stewardship-public-lands/>; Campaign for Accountability, *Documenting Discrimination*, July 2016, *available at* <https://campaignforaccountability.org/work/documenting-discrimination/>; CfA Complaints Against the Heidi Group, Sept. 26, 2017, *available at* <https://campaignforaccountability.org/work/cfa-complaints-against-the-heidi-group/>.

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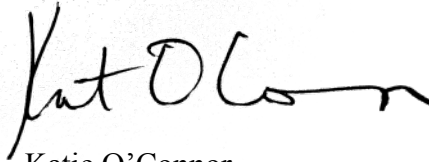
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**Conclusion**

CfA looks forward to working with HHS on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact me at 202-780-5750. Further, if CfA's request for a fee waiver is not granted in full, please contact me immediately upon making such a determination.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie O'Connor". The signature is fluid and cursive, with the first name "Katie" written in a larger, more prominent script than the last name "O'Connor".

Katie O'Connor  
Legal Counsel

# EXHIBIT B



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Public Affairs  
Washington, D.C. 20201

Refer to: Request Number **2017-01242-FOIA-OS**

**October 10, 2017**

Katie O'Connor  
Legal Counsel  
Campaign for Accountability  
611 Pennsylvania Avenue, S.E., #337  
Washington, DC 20003

Dear Ms. O'Connor:

This acknowledges receipt of your September 27, 2017, Freedom of Information Act (FOIA) request, submitted to the Department of Health and Human Services (HHS), FOI/Privacy Acts Division concerning

- “1. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of HHS from, sent by representatives of HHS to, or exchanged between representatives of HHS and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or the Center for Family and Human Rights (“C-Fam”) regarding the January 23 presidential memorandum reinstating the Mexico City Policy,<sup>1</sup> or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.**
- 2. All calendar entries reflecting meetings between representatives of HHS and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.**
- 3. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of HHS from, sent by representatives of HHS to, or exchanged between representatives of HHS Development, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.**
- 4. All calendar entries reflecting meetings between representatives of HHS and representatives of the Department of State, the U.S. Agency for International Development, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy. and representatives of the Department of State, the U.S. Agency for International Development, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.”. We received your request on September 28, 2017.**

We have initiated a search to locate records falling within the scope of your request. If our searching units advise us that you have requested a voluminous amount of records that require extensive search and examination, my staff will contact you shortly to discuss your willingness to modify your request.



The FOIA requires that we respond to your request within 20 working days of its receipt in this office. Please note the following unusual and exceptional circumstances that will impact our response time: (1) we will need to search for and collect records from components and/or field offices external to this office; and (2) because we receive a very heavy volume of FOIA requests, we will process your request in line with our established policy of "first in, first out" case processing. If either of these circumstances prevents our office from responding within the 20 working day timeframe, we will utilize a 10 working day extension to process your request, as permitted pursuant to the FOIA. This policy is consistent with court decisions regarding FOIA's time limits.

The law authorizes us to collect fees for responding to FOIA requests and assume that you are willing to pay any applicable fees for processing this request unless you have stated otherwise. If at any time the fee for processing your request is estimated to exceed \$250.00, we will send you an invoice for the estimated fee and suspend further processing until payment of the invoiced amount is received. If the estimated processing fee does not exceed \$250.00, we will send you an invoice for the actual fee with our response.

Please note the following:

If you believe that we should expedite the processing of your request because the requested records are needed in light of a compelling need; i.e., an imminent threat to the life and safety of an individual; an urgency to inform the public concerning government activity (provided you are a member of the media); a deadline in litigation; a deadline for commenting on proposed regulations; or other urgent matters, you must ask for expedited processing in writing and provide to this office as much relevant information as possible. In line with 5 U.S.C. § 552(a)(6)(E)(vi), you must demonstrate the compelling need in a statement certified to be true and correct to the best of your knowledge and belief. Attach any supporting documentation to your statement, including a court scheduling order if your request is based upon a litigation deadline. (Fax supporting documentation to the FOIA/PA Division at (202) 690-8320).

If your request seeks a waiver or reduction of the fees that we would customarily charge for furnishing agency records and your request does not contain sufficient information to enable us to determine whether a waiver or reduction of fees is warranted, you should provide such information to this office within 10 working days of receipt of this letter. In line with 45 C.F.R. § 5.45, such information must include a detailed explanation of how disclosure to you: (1) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) is not primarily in the commercial interest of the requester. I especially need to know how you intend to disseminate the information to the public.

When submitting this additional information, please refer to the case number listed at the top left-hand corner of this letter, and send it to:

FOI/Privacy Acts Division  
U.S. Department of Health and Human Services  
200 Independence Avenue S.W.  
Room 729H  
Washington, DC 20201

If you are not satisfied with any aspect of the processing and handling of this request, you have the right to seek dispute resolution services from:

Michael Bell  
HHS FOIA Public Liaison  
U.S. Department of Health and Human Services  
Office of the Assistant Secretary for Public Affairs  
Room 729H  
200 Independence Avenue, S.W.  
Washington, DC 20201

Telephone: (202) 260-0793  
E-mail: [HHS\\_FOIA\\_Public\\_Liaison@hhs.gov](mailto:HHS_FOIA_Public_Liaison@hhs.gov)



and/or:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road – OGIS  
College Park, MD 20740-6001

Telephone: 202-741-5770  
Toll-Free: 1-877-684-6448  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Fax: 202-741-5769

Any questions regarding the status of this request should be directed to our office at 202-690-7453.

Sincerely yours,

*For* 

Michael S. Marquis  
Director  
FOI/Privacy Acts Division

# EXHIBIT C

(No subject)

KO ✓

Katie O'Connor

Wed 9/27/2017, 2:24 PM

12022618579@efaxsend.com ✕



Reply all | ✓

FOIA

You forwarded this message on 2/12/2018 11:45 AM

CfA FOIA-State-MCP-... ✓

274 KB

✕ Show all 1 attachments (274 KB) Download Save to OneDrive - Campaign for Accountability

Katie O'Connor

Legal Counsel\*

Campaign for Accountability

[www.campaignforaccountability.org](http://www.campaignforaccountability.org)

[@Accountable\\_Org](#)

\*licensed to practice in Massachusetts and Georgia

C A M P A I G N F O R

ACCOUNTABILITY

September 27, 2017

**By facsimile:** (202) 261-8579

U. S. Department of State  
Office of Information Programs and Services  
A/GIS/IPS/RL  
SA-2, Suite 8100  
Washington, D. C. 20522-0208

**Re: Freedom of Information Request**

To Whom It May Concern:

Campaign for Accountability (“CfA”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, et seq., and the Department of State (“State”) implementing regulations, 22 C.F.R. Part 171.

Specifically, CfA requests that State produce the following within 20 business days:

1. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of State from, sent by representatives of State to, or exchanged between representatives of State and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or the Center for Family and Human Rights (“C-Fam”) regarding the January 23 presidential memorandum reinstating the Mexico City Policy,<sup>1</sup> or State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.<sup>2</sup>
2. All calendar entries reflecting meetings between representatives of State and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
3. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of State from, sent by representatives of State to, or exchanged between representatives of State and representatives of the Trump White House regarding the January 23 presidential

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<sup>1</sup> Presidential Memorandum Regarding the Mexico City Policy, Jan. 23, 2017, *available at* <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-mexico-city-policy>.

<sup>2</sup> Protecting Life in Global Health Assistance Fact Sheet, Department of State, May 15, 2017, *available at* <https://www.state.gov/r/pa/prs/ps/2017/05/270866.htm>.

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memorandum reinstating the Mexico City Policy, or State's May 15 "Protecting Life in Global Health Assistance" plan implementing the policy.

4. All calendar entries reflecting meetings between representatives of State and representatives of the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or State's May 15 "Protecting Life in Global Health Assistance" plan implementing the policy.
5. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of State from, sent by representatives of State to, or exchanged between representatives of State and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding State's decision, announced in an April 3 letter to Senator Bob Corker, to end its funding for the United Nations Population Fund ("UNFPA").<sup>3</sup>
6. All calendar entries reflecting meetings between representatives of State and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding State's decision to end its funding for UNFPA.
7. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of State from, sent by representatives of State to, or exchanged between representatives of State and representatives of the Trump White House regarding State's decision to end its funding for the UNFPA.
8. All calendar entries reflecting meetings between representatives of State and representatives of the Trump White House regarding State's decision to end its funding for UNFPA.

Please provide all responsive records from January 20, 2017, to the date the search is conducted.

By way of background, on January 23, 2017, President Trump signed the "Presidential Memorandum Regarding the Mexico City Policy," reinstating and expanding a policy that withholds U.S. funding from international non-governmental organizations that counsel or refer for abortions, or advocate to decriminalize and expand access to abortion. On May 15, 2017, State announced its "Protecting Life in Global Health Assistance" plan implementing the policy.<sup>4</sup> In its past iterations, which applied only to family planning funds, the Mexico City Policy has had devastating consequences, leading to "the closing of some of the developing world's most effective family planning programs."<sup>5</sup> In its most recent form, which applies to all global health funds, the policy stands to do much more significant damage. It now applies not only to family planning and reproductive health, but also to maternal and child health, HIV/AIDS, prevention

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<sup>3</sup> U.S. Withdraws funding for U.N. Population Fund, *Reuters*, Apr. 3, 2017, available at <https://www.reuters.com/article/us-usa-un-populationfund/u-s-withdraws-funding-for-u-n-population-fund-idUSKBN17600T>.

<sup>4</sup> Protecting Life in Global Health Assistance Fact Sheet, Department of State, May 15, 2017.

<sup>5</sup> Sneha Barot and Susan A. Cohen, Guttmacher Institute, *The Global Gag Rule and Fights over Funding UNFPA: The Issues That Won't Go Away* at 29, Spring 2015, available at [https://www.guttmacher.org/sites/default/files/article\\_files/gpr1802715.pdf](https://www.guttmacher.org/sites/default/files/article_files/gpr1802715.pdf).

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and treatment of malaria, infectious diseases, and even to water, sanitation, and hygiene programs.<sup>6</sup>

Similarly, on April 3, 2017, State announced that it would no longer provide funding for the UNFPA because it had determined that UNFPA “supports or participates in the management of a program of coercive abortion or involuntary sterilization,” in violation of the Kemp-Kasten Amendment.<sup>7</sup> The UNFPA, which supports reproductive health programs in over 150 countries, is funded entirely by voluntary contributions from governments and private organizations and individuals.<sup>8</sup> The United States was the UNFPA’s third largest donor in 2016.<sup>9</sup> In that year alone, the U.S. contribution was enough to enable UNFPA “to save 2,340 women worldwide from dying during pregnancy and childbirth, prevent 947,000 unintended pregnancies, prevent 295,000 unsafe abortions, and fund 1,251 surgeries for fistula, a devastating condition resulting from obstructed labor that causes a woman’s urine or feces to leak out of her body.”<sup>10</sup> Numerous studies have concluded that the UNFPA does not, in fact, support or participate in coercive programs.<sup>11</sup> One such study was conducted by State itself, and concluded that there was “‘no evidence’ that UNFPA was in violation” of the Kemp-Kasten Amendment.<sup>12</sup>

The Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and C-Fam have worked in close coordination with members of Congress and with this administration on issues of reproductive rights and international women’s rights. Last fall, for instance, the Susan B. Anthony List, Concerned Women for America, and C-Fam joined the “Pro-Life Coalition” in support of the Trump-Pence ticket.<sup>13</sup> Representatives of Concerned Women for America have met at least once with Vice President Pence<sup>14</sup> and representatives of the Susan B. Anthony List have met with both the Vice President and Speaker of the House Paul Ryan.<sup>15</sup>

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<sup>6</sup> Human Rights Watch, *Trump’s ‘Mexico City Policy’ or ‘Global Gag Rule,’* June 22, 2017, available at <https://www.hrw.org/news/2017/06/22/trumps-mexico-city-policy-or-global-gag-rule>.

<sup>7</sup> Letter from Joseph Macmanus, Department of State, to the Honorable Bob Corker, Chairman, Committee on Foreign Relations, United States Senate (Apr. 3, 2017) available at <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/State-Kemp-Kasten-Amendment-Determination.pdf>.

<sup>8</sup> <http://www.unfpa.org/frequently-asked-questions#funds>.

<sup>9</sup> <http://www.unfpa.org/data/donor-contributions>.

<sup>10</sup> Nurith Aizenman, *Citing Abortions in China, Trump Cuts Funds for U.N. Family Planning Agency*, NPR, Apr. 4, 2017, available at <http://www.npr.org/sections/goatsandsoda/2017/04/04/522040557/citing-abortions-in-china-trump-cuts-funds-for-u-n-family-planning-agency>

<sup>11</sup> *The Global Gag Rule and Fights over Funding UNFPA: The Issues That Won’t Go Away* at 30, Spring 2015.

<sup>12</sup> *Id.*

<sup>13</sup> Press Release, The Susan B. Anthony List, *Trump Campaign Announces National Co-Chairs of Pro-Life Coalition*, Sept. 27, 2016, available at <https://www.sba-list.org/newsroom/press-releases/trump-campaign-announces-national-co-chairs-pro-life-coalition>.

<sup>14</sup> Christine Grimaldi, *Mike Pence Had a Meeting With Anti-Choice Activists He Doesn’t Want You to Know About*, Rewire, July 11, 2017, available at <https://rewire.news/article/2017/07/11/mike-pence-meeting-anti-choice-activists-doesnt-want-know/>.

<sup>15</sup> Elizabeth Dias, *Inside Mike Pence’s Private Meeting with March for Life Leaders*, Time, Jan. 27, 2017, available at <http://time.com/4651781/mike-pence-march-life-meeting-abortion/>; Mike DeBonis and John Wagner, *Republicans try to revive health-care effort as leaders seek to temper expectations*, Washington Post, Apr. 4, 2017, available at <https://www.washingtonpost.com/powerpost/with-help-from-pence-house-republicans-suddenly-rekindle-health-care-talks/2017/04/04/91cf1c74-192f-11e7-855e->

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Representatives of both organizations have met with President Trump at least once since the inauguration.<sup>16</sup> In March of this year, representatives of C-Fam and the Heritage Foundation attended the U.N. Commission on the Status of Women meeting as members of the official U.S. delegation.<sup>17</sup> The public deserves the opportunity to determine whether and to what extent these organizations have attempted to influence State as it counsels the administration and Congress on the expanded Mexico City Policy and the future of funding for UNFPA, both matters of paramount public concern. The requested records would give the public that opportunity.

In addition to the records requested above, please provide records reflecting the processing of this request, including any tracking sheets; records sufficient to identify search terms used, and locations and custodians searched. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

CfA seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

Please search all records regarding agency business. Please do not exclude searches of files or emails in the personal custody of agency officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>18</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; CfA has a right to access those files even if they have not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>19</sup>

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[4824bbb5d748\\_story.html?utm\\_term=.65f99b29d43e](https://www.washingtonpost.com/news/energy-environment/wp/2017/07/11/conservative-leaders-meet-with-speaker-ryan/?hpid=hp_hp-top-table-main-speaker-ryan%3Aenergy-environment%3Ahomepage%2Fstory&hpid=hp_hp-top-table-main-speaker-ryan%3Aenergy-environment%3Ahomepage%2Fstory); Christine Grimaldi, *Rewire*, July 11, 2017; Press Release, Office of the Speaker of the House Paul Ryan, 115<sup>th</sup> Congress, Speaker Ryan Meets with Conservative Leaders, March 30, 2017, available at <http://www.speaker.gov/press-release/speaker-ryan-meets-conservative-leaders>.

<sup>16</sup> Wolf (CNN television broadcast Feb. 1, 2017), transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/1702/01/wolf.02.html>; Rebecca Ballhaus, *Trump Again Criticizes Jeff Sessions Over Russia Probe*, *Wall Street Journal*, Sept. 26, 2017, available at <https://www.wsj.com/articles/trump-again-criticizes-jeff-sessions-over-russia-probe-1506434848>.

<sup>17</sup> Kathryn Joyce, *The New War on Birth Control*, *Pacific Standard*, Aug. 17, 2017, available at <https://psmag.com/magazine/new-war-on-birth-control>.

<sup>18</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, 827 F.3d 145, 149—150 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955—956 (D.C. Cir. 2016).

<sup>19</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, \_\_\_, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to

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In addition, please note that in conducting a “reasonable search” as required by law, State must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered State’s prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>20</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but State’s archiving tools would capture that email under Capstone. Accordingly, CfA insists that State use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. CfA is available to work with State to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>21</sup> If it is your position that any portion of the requested records is exempt from disclosure, CfA requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>22</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>23</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>24</sup>

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what

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perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>20</sup> Presidential Memorandum – Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), *available at* <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), *available at* <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>21</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

<sup>22</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>23</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>24</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).



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portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>25</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, CfA welcomes an opportunity to discuss its request with State before you undertake your search or incur search or duplication costs. By working together at the outset, CfA and State can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format via email at [koconnor@campaignforaccountability.org](mailto:koconnor@campaignforaccountability.org). Alternatively, our mailing address is Campaign for Accountability, 611 Pennsylvania Avenue SE, #337, Washington DC 20003. If it will accelerate the release, please also provide responsive material on rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 171.16, CfA requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute significantly to a better understanding of relevant government procedures by the general public. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).<sup>26</sup>

CfA requests a waiver of fees because disclosure of the requested information is in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>27</sup> The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public’s business.

Studies show that the Mexico City Policy does real harm to the global reproductive health infrastructure.<sup>28</sup> Studies also show the UNFPA does not support or participate in coercive programs.<sup>29</sup> On the contrary, the UNFPA “flatly condemns all forms of coercion.”<sup>30</sup> Nevertheless, this administration has reinstated and expanded the Mexico City Policy and has stripped the UNFPA of U.S. funding. As demonstrated above, the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and C-Fam have worked closely with this administration and Congress on reproductive rights and women’s rights issues. The records

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<sup>25</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>26</sup> See, e.g., *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

<sup>27</sup> 22 C.F.R. § 171.16(a).

<sup>28</sup> The Global Gag Rule and Fights over Funding UNFPA: The Issues That Won’t Go Away at 29, Spring 2015.

<sup>29</sup> *Id.* at 30.

<sup>30</sup> *Id.* at 31.

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CfA seeks will help the public understand whose interests are being considered as the administration makes decisions that have such a profound impact on people's lives.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) organization, CfA does not have a commercial purpose and the release of the information requested is not in CfA's financial interest. CfA is committed to protecting the public's right to be aware of the activities of government officials and to ensuring the integrity of those officials. CfA uses a combination of research, litigation, and advocacy to advance its mission. CfA will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CfA will disseminate any documents it acquires from this request to the public through its website, [www.campaignforaccountability.org](http://www.campaignforaccountability.org).

Accordingly, CfA qualifies for a fee waiver.

### **News Media Fee Waiver Request**

CfA also asks that it not be charged search or review fees for this request because CfA qualifies as a "representative of the news media" pursuant to the FOIA and State regulation 22 C.F.R. § 171.14(b)(5)(ii)(C). In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the District of Columbia Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly; "[i]t is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.* CfA meets this test.

CfA routinely and systematically "gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience."<sup>31</sup> It does so by regularly posting documents it receives through open records laws, including the FOIA, to its website,<sup>32</sup> analyzing those documents, and publishing reports, letters, and further requests based those documents.<sup>33</sup> Based on its publication activities, CfA qualifies as a "representative of the news media" under the FOIA and agency regulations.

<sup>31</sup> 22 C.F.R. § 171.14(b)(5)(ii)(C); 5 U.S.C. § 552(a)(4)(A)(ii)(III).

<sup>32</sup> Letter from Daniel Stevens, Executive Director, Campaign for Accountability, to Thomas B. Pahl, Acting Director, Bureau of Consumer Protection, Federal Trade Commission (July 19, 2017), available at <https://campaignforaccountability.org/work/ftc-solar-complaint/>; Letter from Katie O'Connor, Legal Counsel, Campaign for Accountability, to Margaret Moore, Travis County District Attorney (Sept. 26, 2017), available at <https://www.documentcloud.org/public/search/projectid:35338-CfA-Letter-to-Travis-County-DA-9-26-17>.

<sup>33</sup> Campaign for Accountability, *Utah Commission for the Stewardship of Public Lands*, Sept. 7, 2017, available at <https://campaignforaccountability.org/work/utah-commission-stewardship-public-lands/>; Campaign for Accountability, *Documenting Discrimination*, July 2016, available at <https://campaignforaccountability.org/work/documenting-discrimination/>; CfA Complaints Against the Heidi Group, Sept. 26, 2017, available at <https://campaignforaccountability.org/work/cfa-complaints-against-the-heidi-group/>.

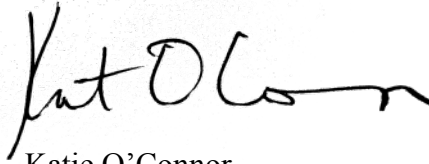
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**Conclusion**

CfA looks forward to working with State on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact me at 202-780-5750. Further, if CfA's request for a fee waiver is not granted in full, please contact me immediately upon making such a determination.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie O'Connor". The signature is fluid and cursive, with the first name "Katie" written in a larger, more prominent script than the last name "O'Connor".

Katie O'Connor  
Legal Counsel

# EXHIBIT D



United States Department of State

Washington, D.C. 20520

OCT 12 2017

Dear Requester,

RE: Documents received by representatives of State from, sent by representatives of State to, or exchanged between representatives of State and representatives of the Susan B. Anthony List concerned Women for America the Sept. 27<sup>th</sup>. This is in response to your request dated Sept. 27<sup>th</sup>, which was received on F-2017-15758. We have assigned Case Control Number F-2017-15758 and will begin the processing of your request based upon the information provided in Heritage Foundation, and/or the Center for Family and Human Rights regarding the Jan. 23<sup>rd</sup> Presidential Memorandum reinstating Mexico City Policy or State's May 15 "Protecting Life in Global Health Assistance," etc. your communication.

The cut-off date is the date the search is initiated unless you have provided a specific timeframe.

We have considered your request for a fee waiver. A waiver or reduction of fees may be appropriate when the disclosure of records is in the public interest because the disclosure is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the interest of the requester. See 22 C.F.R. § 171.16. In light of the information supplied in your request, we will now defer our decision to grant or deny your request for a fee waiver until we are able to determine whether the disclosure of any records responsive to your request is in the public interest, consistent with the application of 22 C.F.R. § 171.16.

Unusual circumstances (including the number and location of Department components involved in responding to your request, the volume of requested records, etc.) may arise that would require additional time to process your request.

We will notify you as soon as responsive material has been retrieved and reviewed.

Should you have any questions, you may call our FOIA Requester Service Center at (202) 261-8484 or send an email to FOIAstatus@state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

Requester Communications Branch  
Office of Information Programs & Services

**Fees:** The Freedom of Information Act (FOIA) provides that agencies may assess fees to recover the direct costs of processing requests, unless a fee waiver has been granted.

According to our regulations, by making a FOIA request, you have agreed to pay all applicable fees up to \$25 unless a fee waiver has been granted. You may specify a willingness to pay a greater amount. If the estimated fees exceed this limit, you will be notified. **Please do not send payment in advance. If there are fees incurred in the processing of your request, you will be notified of the amount owed in separate correspondence.**

\_\_\_\_\_ You have stated your willingness to pay the fees incurred in the processing of this request up to \$\_\_\_\_\_.

☒ Please let us know if you are willing to pay the fees that will be incurred in the processing of your request. You may set a limit of the maximum amount that you wish to pay. Please be advised that, without an agreement to pay fees, your request will be processed without cost up to the required first 2 hours of search time (for all other requester category only) and duplication of the first 100 pages (for all other, media, educational and non-commercial scientific requester categories).

Based upon the information that you have provided, we have placed you in the requester category checked below. This request will be processed in accordance with the fee schedule designated for that category (see 22 C.F.R. 171).

\_\_\_\_\_ **Commercial Use Requesters** – Charges may be assessed that recover the full direct costs of searching for, reviewing for release, and duplicating the record(s) sought.

\_\_\_\_\_ **Educational Institution Requesters** – Charges may be assessed that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.

\_\_\_\_\_ **Non-commercial Scientific Institution Requesters** – Charges may be assessed that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.

\_\_\_\_\_ **Representatives of the News Media** – Charges may be assessed that recover the cost of duplicating the record(s) sought only, after the first 100 pages of duplication.

☒ **All Other Requesters** – Charges may be assessed that recover the full reasonable direct cost of searching for and duplicating the record(s) sought, after the first 100 pages of duplication, and the first two hours of search time.

☒ You have indicated your inclusion in a category different than the one indicated above. Please forward the information requested on the enclosed sheet titled "Requester Categories" to substantiate your inclusion in a particular category of requester.

We will notify you of the costs incurred in processing your request as soon as the search for, and review of, any responsive documents have been completed.

## **REQUESTER CATEGORIES**

“Commercial use” requesters are defined as those who seek records for "a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is being made. **If you believe that you should NOT be considered a commercial use requester, please provide:**

Evidence that your use of the requested information will NOT further any commercial, trade, or profit interest of yourself or the person(s) on whose behalf the request is made.

“Educational or non-commercial scientific institution” requesters are defined as requesters who seek records for a noncommercial use and who qualify as being affiliated with an educational institution, or are part of a noncommercial scientific institution. **If you believe that you should be considered an educational or noncommercial scientific institution requester, please provide:**

A statement submitted on official letterhead signed by the chairperson of your department, which indicates that your request is authorized by and under the auspices of a specific institution and that the requested records are not sought for a commercial use, and are not intended to promote any particular product or industry, but are sought in furtherance of scholarly or scientific research.

“Representatives of the news media” requesters are defined as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” **If you believe that you should be considered a representative of the news media, please provide:**

Evidence that you are employed by an entity that is organized and operated to publish or broadcast news to the public.

Evidence, if you are associated with a periodical publication such as a newsletter, that your product is available for purchase or subscription by the general public.

Evidence, if you are a freelance journalist, of the likelihood of publication through the news media (e.g., a publication contract, examples of past publications, etc.).

Evidence that the information you request is about current events or would be of current interest to the public.

# EXHIBIT E



## Freedom of Information Request

KO ✓

Katie O'Connor

Wed 9/27/2017, 1:47 PM

foia@usaid.gov ✓



Reply all | ✓

FOIA

You forwarded this message on 2/12/2018 11:46 AM

CfA FOIA-USAID-MC... ✓

272 KB

✓ Show all 1 attachments (272 KB) Download Save to OneDrive - Campaign for Accountability

To whom it may concern:

Attached, please find a Freedom of Information Act Request. Please do not hesitate to contact me with any questions or concerns regarding this request.

Sincerely,  
Katie O'Connor

Katie O'Connor  
Legal Counsel\*  
Campaign for Accountability  
[www.campaignforaccountability.org](http://www.campaignforaccountability.org)  
[@Accountable\\_Org](https://twitter.com/Accountable_Org)

\*licensed to practice in Massachusetts and Georgia

C A M P A I G N F O R

ACCOUNTABILITY

September 27, 2017

By email: [foia@usaid.gov](mailto:foia@usaid.gov)

USAID FOIA Office  
Bureau for Management  
Office of Management Services  
Information and Records Division  
Room 2.07C – RRB  
Washington, DC 20523-2701

**Re: Freedom of Information Request**

To Whom It May Concern:

Campaign for Accountability (“CfA”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. §§ 552, et seq., and the U.S. Agency for International Development (“USAID”) implementing regulations, 22 C.F.R. Part 212.

Specifically, CfA requests that USAID produce the following within 20 business days:

1. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of USAID from, sent by representatives of USAID to, or exchanged between representatives of USAID and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or the Center for Family and Human Rights (“C-Fam”) regarding the January 23 presidential memorandum reinstating the Mexico City Policy,<sup>1</sup> or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.<sup>2</sup>
2. All calendar entries reflecting meetings between representatives of USAID and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.
3. All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of USAID from, sent by representatives of USAID to, or exchanged between representatives of USAID and representatives of the Department of State, the Department of Health and

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<sup>1</sup> Presidential Memorandum Regarding the Mexico City Policy, Jan. 23, 2017, *available at* <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-mexico-city-policy>.

<sup>2</sup> Protecting Life in Global Health Assistance Fact Sheet, Department of State, May 15, 2017, *available at* <https://www.state.gov/r/pa/prs/ps/2017/05/270866.htm>.

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Human Services, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global Health Assistance" plan implementing the policy.

4. All calendar entries reflecting meetings between representatives of USAID and representatives of the Department of State, the Department of Health and Human Services, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global Health Assistance" plan implementing the policy.

Please provide all responsive records from January 20, 2017, to the date the search is conducted.

By way of background, on January 23, 2017, President Trump signed the "Presidential Memorandum Regarding the Mexico City Policy," reinstating and expanding a policy that withholds U.S. funding from international non-governmental organizations that counsel or refer for abortions, or advocate to decriminalize and expand access to abortion.<sup>3</sup> On May 15, 2017, the Department of State announced its "Protecting Life in Global Health Assistance" plan implementing the policy.<sup>4</sup> In its past iterations, which applied only to family planning funds, the Mexico City Policy has had devastating consequences, leading to "the closing of some of the developing world's most effective family planning programs."<sup>5</sup> In its most recent form, which applies to all global health funds, the policy stands to do much more significant damage. It now applies not only to family planning and reproductive health, but also to maternal and child health, HIV/AIDS, prevention and treatment of malaria, infectious diseases, and even to water, sanitation, and hygiene programs.<sup>6</sup>

The Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and C-Fam have worked in close coordination with members of Congress and with this administration on issues of reproductive rights and international women's rights. Last fall, for instance, the Susan B. Anthony List, Concerned Women for America, and C-Fam joined the "Pro-Life Coalition" in support of the Trump-Pence ticket.<sup>7</sup> Representatives of Concerned Women for America have met at least once with Vice President Pence<sup>8</sup> and representatives of the Susan B. Anthony List have met with both the Vice President and Speaker of the House Paul Ryan.<sup>9</sup>

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<sup>3</sup> Jessie Hellman, *Trump reinstates ban on US funding for abortion overseas*, *The Hill*, Jan. 23, 2017, available at <http://thehill.com/policy/healthcare/abortion/315652-trump-signs-executive-order-reinstating-global-gag-rule-on>.

<sup>4</sup> Protecting Life in Global Health Assistance Fact Sheet, Department of State, May 15, 2017.

<sup>5</sup> Sneha Barot and Susan A. Cohen, Guttmacher Institute, *The Global Gag Rule and Fights over Funding UNFPA: The Issues That Won't Go Away* at 29, Spring 2015, available at [https://www.guttmacher.org/sites/default/files/article\\_files/gpr1802715.pdf](https://www.guttmacher.org/sites/default/files/article_files/gpr1802715.pdf).

<sup>6</sup> Human Rights Watch, *Trump's 'Mexico City Policy' or 'Global Gag Rule'*, June 22, 2017, available at <https://www.hrw.org/news/2017/06/22/trumps-mexico-city-policy-or-global-gag-rule>.

<sup>7</sup> Press Release, The Susan B. Anthony List, *Trump Campaign Announces National Co-Chairs of Pro-Life Coalition*, Sept. 27, 2016, available at <https://www.sba-list.org/newsroom/press-releases/trump-campaign-announces-national-co-chairs-pro-life-coalition>.

<sup>8</sup> Christine Grimaldi, *Mike Pence Had a Meeting With Anti-Choice Activists He Doesn't Want You to Know About*, *Rewire*, July 11, 2017, available at <https://rewire.news/article/2017/07/11/mike-pence-meeting-anti-choice-activists-doesnt-want-know/>.

<sup>9</sup> Elizabeth Dias, *Inside Mike Pence's Private Meeting with March for Life Leaders*, *Time*, Jan. 27, 2017, available at <http://time.com/4651781/mike-pence-march-life-meeting-abortion/>; Mike DeBonis and John Wagner,

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Representatives of both organizations have met with President Trump at least once since the inauguration.<sup>10</sup> In March of this year, representatives of C-Fam and the Heritage Foundation attended the U.N. Commission on the Status of Women meeting as members of the official U.S. delegation.<sup>11</sup> The public deserves the opportunity to determine whether and to what extent these organizations have attempted to influence USAID as it counsels the administration and Congress on the expanded Mexico City Policy, a matter of paramount public concern. The requested records would give the public that opportunity.

In addition to the records requested above, please provide records reflecting the processing of this request, including any tracking sheets; records sufficient to identify search terms used, and locations and custodians searched. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

CfA seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. No category of material should be omitted from search, collection, and production.

Please search all records regarding agency business. Please do not exclude searches of files or emails in the personal custody of agency officials, such as personal email accounts. Records of official business conducted using unofficial systems or stored outside of official files is subject to the Federal Records Act and FOIA.<sup>12</sup> It is not adequate to rely on policies and procedures that require officials to move such information to official systems within a certain period of time; CfA has a right to access those files even if they have not yet been moved to official systems or if officials have, through negligence or willfulness, failed to meet their obligations.<sup>13</sup>

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Republicans try to revive health-care effort as leaders seek to temper expectations, *Washington Post*, Apr. 4, 2017, available at [https://www.washingtonpost.com/powerpost/with-help-from-pence-house-republicans-suddenly-rekindle-health-care-talks/2017/04/04/91cf1c74-192f-11e7-855e-4824bbb5d748\\_story.html?utm\\_term=.65f99b29d43e](https://www.washingtonpost.com/powerpost/with-help-from-pence-house-republicans-suddenly-rekindle-health-care-talks/2017/04/04/91cf1c74-192f-11e7-855e-4824bbb5d748_story.html?utm_term=.65f99b29d43e); Christine Grimaldi, *Rewire*, July 11, 2017; Press Release, Office of the Speaker of the House Paul Ryan, 115<sup>th</sup> Congress, Speaker Ryan Meets with Conservative Leaders, March 30, 2017, available at <http://www.speaker.gov/press-release/speaker-ryan-meets-conservative-leaders>.

<sup>10</sup> Wolf (CNN television broadcast Feb. 1, 2017), transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/1702/01/wolf.02.html>; Rebecca Ballhaus, *Trump Again Criticizes Jeff Sessions Over Russia Probe*, *Wall Street Journal*, Sept. 26, 2017, available at <https://www.wsj.com/articles/trump-again-criticizes-jeff-sessions-over-russia-probe-1506434848>.

<sup>11</sup> Kathryn Joyce, *The New War on Birth Control*, *Pacific Standard*, Aug. 17, 2017, available at <https://psmag.com/magazine/new-war-on-birth-control>.

<sup>12</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, 827 F.3d 145, 149—150 (D.C. Cir. 2016); cf. *Judicial Watch, Inc. v. Kerry*, 844 F.3d 952, 955—956 (D.C. Cir. 2016).

<sup>13</sup> See *Competitive Enterprise Institute v. Office of Science & Tech. Policy*, \_\_\_, slip op. at 8 (D.D.C. Dec. 12, 2016) (“The Government argues that because the agency had a policy requiring [the official] to forward all of his emails

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In addition, please note that in conducting a “reasonable search” as required by law, USAID must employ the most up-to-date technologies and tools available, in addition to searches by individual custodians likely to have responsive information. Recent technology may have rendered USAID’s prior FOIA practices unreasonable. In light of the government-wide requirements to manage information electronically by the end of 2016, it is no longer reasonable to rely exclusively on custodian-driven searches.<sup>14</sup> Furthermore, agencies that have adopted the National Archives and Records Agency (NARA) Capstone program, or similar policies, now maintain emails in a form that is reasonably likely to be more complete than individual custodians’ files. For example, a custodian may have deleted a responsive email from his or her email program, but USAID’s archiving tools would capture that email under Capstone. Accordingly, CfA insists that USAID use the most up-to-date technologies to search for responsive information and take steps to ensure that the most complete repositories of information are searched. CfA is available to work with USAID to craft appropriate search terms. However, custodian searches are still required; agencies may not have direct access to files stored in .PST files, outside of network drives, in paper format, or in personal email accounts.

Under the FOIA Improvement Act of 2016, agencies must adopt a presumption of disclosure, withholding information “only if . . . disclosure would harm an interest protected by an exemption” or “disclosure is prohibited by law.”<sup>15</sup> If it is your position that any portion of the requested records is exempt from disclosure, CfA requests that you provide an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). As you are aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.”<sup>16</sup> Moreover, the *Vaughn* index “must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.”<sup>17</sup> Further, “the withholding agency must supply ‘a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’”<sup>18</sup>

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from his [personal] account to his business email, the [personal] account only contains duplicate agency records at best. Therefore, the Government claims that any hypothetical deletion of the [personal account] emails would still leave a copy of those records intact in [the official’s] work email. However, policies are rarely followed to perfection by anyone. At this stage of the case, the Court cannot assume that each and every work-related email in the [personal] account was duplicated in [the official’s] work email account.” (citations omitted)).

<sup>14</sup> Presidential Memorandum – Managing Government Records, 76 Fed. Reg. 75,423 (Nov. 28, 2011), *available at* <https://obamawhitehouse.archives.gov/the-press-office/2011/11/28/presidential-memorandum-managing-government-records>; Office of Mgmt. & Budget, Exec. Office of the President, Memorandum for the Heads of Executive Departments & Independent Agencies, “Managing Government Records Directive,” M-12-18 (Aug. 24, 2012), *available at* <https://www.archives.gov/files/records-mgmt/m-12-18.pdf>.

<sup>15</sup> FOIA Improvement Act of 2016 § 2 (Pub. L. No. 114–185).

<sup>16</sup> *Founding Church of Scientology v. Bell*, 603 F.2d 945, 949 (D.C. Cir. 1979).

<sup>17</sup> *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original).

<sup>18</sup> *Id.* at 224 (citing *Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977)).

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In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document.<sup>19</sup> Claims of nonsegregability must be made with the same degree of detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

To ensure that this request is properly construed, that searches are conducted in an adequate but efficient manner, and that extraneous costs are not incurred, CfA welcomes an opportunity to discuss its request with USAID before you undertake your search or incur search or duplication costs. By working together at the outset, CfA and USAID can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in electronic format via email at [koconnor@campaignforaccountability.org](mailto:koconnor@campaignforaccountability.org). Alternatively, our mailing address is Campaign for Accountability, 611 Pennsylvania Avenue SE, #337, Washington DC 20003. If it will accelerate the release, please also provide responsive material on rolling basis.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and 22 C.F.R. § 212.14(k), CfA requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures will likely contribute significantly to a better understanding of relevant government procedures by the general public. Moreover, the request is primarily and fundamentally for non-commercial purposes. 5 U.S.C. § 552(a)(4)(A)(iii).<sup>20</sup>

CfA requests a waiver of fees because disclosure of the requested information is in the public interest because it is “likely to contribute significantly to public understanding of the operations or activities of the government.”<sup>21</sup> The disclosure of the information sought under this request will document and reveal the operations of the federal government, including how officials conduct the public’s business.

Studies show that the Mexico City Policy does real harm to the global reproductive health infrastructure.<sup>22</sup> Nevertheless, this administration has reinstated and expanded the policy. As demonstrated above, the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and C-Fam have worked closely with this administration and Congress on reproductive rights and women’s rights issues. The records CfA seeks will help the public

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<sup>19</sup> *Mead Data Central*, 566 F.2d at 261.

<sup>20</sup> *See, e.g., McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

<sup>21</sup> 22 C.F.R. § 212(k)(1)(i).

<sup>22</sup> The Global Gag Rule and Fights over Funding UNFPA: The Issues That Won’t Go Away at 29, Spring 2015.



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understand whose interests are being considered as the administration makes decisions that have such a profound impact on people's lives.

This request is primarily and fundamentally for non-commercial purposes. As a 501(c)(3) organization, CfA does not have a commercial purpose and the release of the information requested is not in CfA's financial interest. CfA is committed to protecting the public's right to be aware of the activities of government officials and to ensuring the integrity of those officials. CfA uses a combination of research, litigation, and advocacy to advance its mission. CfA will analyze the information responsive to this request, and will share its analysis with the public, either through memoranda, reports, or press releases. In addition, CfA will disseminate any documents it acquires from this request to the public through its website, [www.campaignforaccountability.org](http://www.campaignforaccountability.org).

Accordingly, CfA qualifies for a fee waiver.

### **News Media Fee Waiver Request**

CfA also asks that it not be charged search or review fees for this request because CfA qualifies as a "representative of the news media" pursuant to the FOIA and USAID regulation 22 C.F.R. § 212.14(c). In *Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989), the Court of Appeals for the District of Columbia Circuit found the National Security Archive was a representative of the news media under the FOIA, relying on the FOIA's legislative history, which indicates the phrase "representative of the news media" is to be interpreted broadly; "[i]t is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'*" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986) (emphasis added), cited in *id.* CfA meets this test.

CfA routinely and systematically "gathers information of potential interest to a segment of the public, uses its editorial skills to turn raw materials into a distinct work, and distributes that work to an audience."<sup>23</sup> It does so by regularly posting documents it receives through open records laws, including the FOIA, to its website,<sup>24</sup> analyzing those documents, and publishing reports, letters, and further requests based those documents.<sup>25</sup> Based on its publication activities, CfA qualifies as a "representative of the news media" under the FOIA and agency regulations.

<sup>23</sup> 22 C.F.R. § 212.14(b)(7); 5 U.S.C. § 552(a)(4)(A)(ii)(III).

<sup>24</sup> Letter from Daniel Stevens, Executive Director, Campaign for Accountability, to Thomas B. Pahl, Acting Director, Bureau of Consumer Protection, Federal Trade Commission (July 19, 2017), available at <https://campaignforaccountability.org/work/ftc-solar-complaint/>; Letter from Katie O'Connor, Legal Counsel, Campaign for Accountability, to Margaret Moore, Travis County District Attorney (Sept. 26, 2017), available at <https://www.documentcloud.org/public/search/projectid:35338-CfA-Letter-to-Travis-County-DA-9-26-17>.

<sup>25</sup> Campaign for Accountability, *Utah Commission for the Stewardship of Public Lands*, Sept. 7, 2017, available at <https://campaignforaccountability.org/work/utah-commission-stewardship-public-lands/>; Campaign for Accountability, *Documenting Discrimination*, July 2016, available at <https://campaignforaccountability.org/work/documenting-discrimination/>; CfA Complaints Against the Heidi Group, Sept. 26, 2017, available at <https://campaignforaccountability.org/work/cfa-complaints-against-the-heidi-group/>.

U.S. Agency for International Development

September 27, 2017

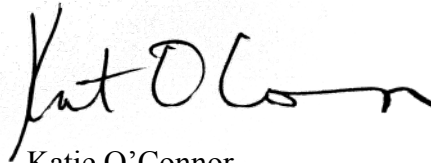
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**Conclusion**

CfA looks forward to working with USAID on this request. If you do not understand any part of this request, have any questions, or foresee any problems in fully releasing the requested records, please contact me at 202-780-5750. Further, if CfA's request for a fee waiver is not granted in full, please contact me immediately upon making such a determination.

Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie O'Connor". The signature is fluid and cursive, with the first name "Katie" written in a larger, more prominent script than the last name "O'Connor".

Katie O'Connor  
Legal Counsel



# EXHIBIT F

## USAID FOIA REQUEST No. F-00300-17 (FOIA Assignment Email)



qnorman@usaid.gov

Thu 9/28/2017, 7:53 AM

Katie O'Connor ▾



Reply all | ▾

FOIA

You forwarded this message on 2/12/2018 11:54 AM



F-00300-17 Inc Req1.... ▾

272 KB

▾ Show all 1 attachments (272 KB) Download Save to OneDrive - Campaign for Accountability



Action Items



September 28, 2017

RE: USAID FOIA No. F-00300-17

Dear Ms. O'Connor:

This acknowledges receipt of your September 27, 2017, Freedom of Information Act (FOIA) to the United States Agency for International Development (USAID). Specifically, you requested:

- (1) All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of USAID from, sent by representatives of USAID to, or exchanged between representatives of USAID and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or the Center for Family and Human Rights (“C- Fam”) regarding the January 23 presidential memorandum reinstating the Mexico City Policy,<sup>1</sup> or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.**
- (2) All calendar entries reflecting meetings between representatives of USAID and representatives of the Susan B. Anthony List, Concerned Women for America, the Heritage Foundation, and/or C-Fam regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State’s May 15 “Protecting Life in Global Health Assistance” plan implementing the policy.**
- (3) All communications, meeting notices, meeting agendas, informational materials, draft legislation, talking points, or other documents received by representatives of USAID from, sent by representatives of USAID to, or exchanged between representatives of USAID and representatives of the Department of State, the Department of**

Case 1:18-cv-00464 Document 1-6 Filed 02/27/18 Page 3 of 3  
**Health and Human Services, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global Health Assistance" plan implementing the policy.**

**(4) All calendar entries reflecting meetings between representatives of USAID and representatives of the Department of State, the Department of Health and Human Services, and/or the Trump White House regarding the January 23 presidential memorandum reinstating the Mexico City Policy, or the Department of State's May 15 "Protecting Life in Global Health Assistance" plan implementing the policy.**

**(Date Range for Record Search: From 1/20/2017 To 9/27/2017).**

**In addition to the records requested above, you also requested records reflecting the processing of this request, including any tracking sheets; records sufficient to identify search terms used, and locations and custodians searched. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they possess responsive materials or to describe how they conducted searches, and any such records prepared in connection with the processing of this request. You also requested a fee waiver.**

#### Fee Waiver

The FOIA provides that fees should be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. As a member of the media, the only applicable fee is duplication. Duplication is \$0.10 per page, but the first 100 pages are free. After review of the fee waiver criteria, your fee waiver request is moot. Since the only applicable fee is duplication, and USAID routinely furnishes responsive records to FOIA requesters in electronic format, it's most likely there will be no duplication fees to assess.

#### FOIA Specialist

Your request has been assigned to **Qianna Norman, ADR/FOIA Specialist**. You may contact **Qianna Norman** by email at **qnorman@usaid.gov** or by phone on **202-712-5295**. Please reference the tracking number cited above in any future correspondence.

Qianna Norman  
FOIA Specialist  
Bureau for Management  
Office of Management Services  
Information and Records Division

## CIVIL COVER SHEET

JS-44 (Rev. 7/16 DC)

<b>I. (a) PLAINTIFFS</b> CAMPAIGN FOR ACCOUNTABILITY  (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>11001</u> (EXCEPT IN U.S. PLAINTIFF CASES)	<b>DEFENDANTS</b> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. DEPARTMENT OF STATE, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT  COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>11001</u> (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>																								
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Carey S. Busen Baker & Hostetler LLP Washington Square, 1050 Connecticut Ave., NW, Ste 1100 Washington, DC 20006; 202-861-1568	ATTORNEYS (IF KNOWN)																								
<b>II. BASIS OF JURISDICTION</b> (PLACE AN x IN ONE BOX ONLY)	<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) <b>FOR DIVERSITY CASES ONLY!</b>																								
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <input type="radio"/> 1 U.S. Government Plaintiff         </div> <div style="width: 48%;"> <input type="radio"/> 3 Federal Question (U.S. Government Not a Party)         </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 48%;"> <input checked="" type="radio"/> 2 U.S. Government Defendant         </div> <div style="width: 48%;"> <input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)         </div> </div>	<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> <th></th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td style="text-align: center;"><input checked="" type="radio"/> 1</td> <td style="text-align: center;"><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td style="text-align: center;"><input type="radio"/> 4</td> <td style="text-align: center;"><input checked="" type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td style="text-align: center;"><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td style="text-align: center;"><input type="radio"/> 5</td> <td style="text-align: center;"><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td style="text-align: center;"><input type="radio"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="radio"/> 6</td> <td style="text-align: center;"><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input checked="" type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input checked="" type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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## IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act  <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
<input checked="" type="radio"/> <b>E. General Civil (Other)</b> OR <input type="radio"/> <b>F. Pro Se General Civil</b>			
<u>Real Property</u> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <u>Personal Property</u> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<u>Bankruptcy</u> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <u>Prisoner Petitions</u> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement  <u>Property Rights</u> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <u>Federal Tax Suits</u> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<u>Forfeiture/Penalty</u> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <u>Other Statutes</u> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/Privacy Act</b>  <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> <b>N. Three-Judge Court</b>  <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

**V. ORIGIN**  
☒ 1 Original Proceeding  
 ☐ 2 Removed from State Court  
 ☐ 3 Remanded from Appellate Court  
 ☐ 4 Reinstated or Reopened  
 ☐ 5 Transferred from another district (specify)  
 ☐ 6 Multi-district Litigation  
 ☐ 7 Appeal to District Judge from Mag. Judge  
 ☐ 8 Multi-district Litigation – Direct File

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 Plaintiff is seeking declaratory and injunctive relief to compel compliance with requirements of FOIA (5 U.S.C. § 522, 28 U.S.C. § 1361)

<b>VII. REQUESTED IN COMPLAINT</b>	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	<b>DEMAND \$</b>	<b>JURY DEMAND:</b> YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
<b>VIII. RELATED CASE(S) IF ANY</b>	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: 2/27/2018	SIGNATURE OF ATTORNEY OF RECORD: /s/ Carey S. Busen
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**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Campaign for Accountability

*Plaintiff*

v.

US Dept. of Health & Human Ser., US Dept. of

*Defendant*

State, U.S. Agency for International Development

Civil Action No. 18-cv-464

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC 20201

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Carey S. Busen  
Baker Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Ave., N.W.  
Washington, DC 20036

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

Civil Action No. 18-cv-464

Signature of Clerk or Deputy Clerk



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Campaign for Accountability

*Plaintiff*

v.

US Dept. of Health & Human Ser., US Dept. of

*Defendant*

State, U.S. Agency for International Development

Civil Action No. 18-cv-464

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

Jeff Sessions  
United States Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Carey S. Busen  
Baker Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Ave., N.W.  
Washington, DC 20036

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Campaign for Accountability

*Plaintiff*

v.

US Dept. of Health & Human Ser., US Dept. of

*Defendant*

State, U.S. Agency for International Development

Civil Action No. 18-cv-464

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

United States Department of State  
2201 C. Street, N.W.  
Washington, D.C. 20520

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Carey S. Busen  
Baker Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Ave., N.W.  
Washington, DC 20036

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Campaign for Accountability

*Plaintiff*

v.

US Dept. of Health & Human Ser., US Dept. of

*Defendant*

State, U.S. Agency for International Development

Civil Action No. 18-cv-464

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*

United States Agency for International Development (USAID)  
Ronald Reagan Building  
Washington, D.C. 20523-1000

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Carey S. Busen  
Baker Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Ave., N.W.  
Washington, DC 20036

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*ANGELA D. CAESAR, CLERK OF COURT*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE***(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
 was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the summons on the individual at *(place)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
 \_\_\_\_\_, a person of suitable age and discretion who resides there,  
 on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* \_\_\_\_\_, who is  
 designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
 \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the summons unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*: \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc: